IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Bail Appl..No. 5904 of 2007()

CRIME NO.351/07 OF CHERTHALA POLICE STATION

: PETITIONERS/ACCUSED

JOHNSON, PILLERKKATTU,
AROOR P.O., CHERTHALA.

BY ADV. SRI.C.K.SAJEEV

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No.5904 of 2007

Dated this the 1st day of October, 2007

ORDER

Application for anticipatory bail. There is no representation for the petitioner. The petitioner faces allegations under Section 420 I.P.C. The crux of the allegations against the petitioner is that he made false and fraudulent promises to marry the defacto complainant and on such false and fraudulent representations induced her to have sexual intercourse with him. She became pregnant. The petitioner, thereafter did not care for the defacto complainant. The defacto complainant realised that she was being fraudulently deceived.

2. The crime was registered on the basis of a private complaint filed by the defacto complainant which was referred to the police by the learned Magistrate under Section 156(3) Cr.P.C. The petitioner apprehending imminent arrest has come before this Court with this application for anticipatory bail.

3. The learned Public Prosecutor on instructions submits that the investigation is already complete. Final report has already been filed on 17.09.07. The petitioner is not required to be arrested by the police now. The petitioner may be directed to surrender before the learned Magistrate and seek regular bail, submits the learned Public Prosecutor .

4. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C

4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

rtr/-